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Attorneys for Plaintiff
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JM FISHERIES LLC,)
G.S. FISHERIES INC.,)
JAMES SOUSA, and)
EDWARD DACOSTA,)
)
Defendants.)

**STIPULATION OF PARTIAL SETTLEMENT AND
ORDER OF PARTIAL DISMISSAL**

WHEREAS, this Stipulation of Partial Settlement and Order of Partial Dismissal (“Stipulation and Order”) is submitted for the Court’s approval to resolve the United States’ claims alleged in the Complaint against settling defendant Edward DaCosta;

WHEREAS, the United States, on behalf of the United States Coast Guard, asserted civil penalty claims under the Clean Water Act against defendant Edward DaCosta;

WHEREAS, this is an oil spill enforcement action under Section 311 of the Clean Water Act, 33 U.S.C. § 1321. The Complaint was filed on behalf of the

United States Coast Guard concurrently with this Stipulation and Order. ECF No.

1. The Complaint alleges the defendants' discharged harmful quantities of oil from the U.S.-flagged commercial fishing vessel, *Capt. Vincent Gann* (Official Number: 953794), into Pago Pago Harbor in American Samoa on April 20, 2018 and committed a number of other violations of the Coast Guard's pollution control regulations promulgated under Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. §1321. The Complaint seeks civil penalties and injunctive relief under Section 311 of the CWA, 33 U.S.C. § 1321;

WHEREAS, the penalty and injunctive relief claims against defendants JM Fisheries LLC, G.S. Fisheries LLC, and James Sousa are being resolved through a Partial Consent Decree lodged with the Court concurrently with the filing of the Complaint;

WHEREAS, settling defendant Edward DaCosta asserts that he has a limited financial ability to pay penalties for the alleged violations in the Complaint and has submitted financial information to the United States that materially sets forth his financial circumstances. The financial information provided includes his income tax returns, statements of income and expenses, and other financial records;

WHEREAS, the United States, with the assistance of an expert financial analyst, has reviewed the financial information submitted by settling defendant Edward DaCosta to assess his asserted limited ability to pay. Based on the

financial information provided, the United States has determined that Edward DaCosta has a limited ability to pay the full amount that would otherwise be appropriate for the serious violations alleged in the Complaint. Accordingly, the amount assessed in this Stipulation and Order is reduced to the agreed levels presented herein based on Edward DaCosta's demonstrated limited ability to pay;

WHEREAS, settling defendant Edward DaCosta does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the United States and settling defendant Edward DaCosta with the advice of his legal counsel (collectively, the "Parties"), agree that this Stipulation and Order was negotiated by the Parties in good faith and is fair, adequate, reasonable, and faithful to the objectives of the Clean Water Act;

WHEREAS, the Parties further agree that the Court's approval of this Stipulation and Order is an appropriate means of resolving the claims in this action;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in this Section and in Paragraph 1, below, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 311(b)(7)(E) and (n) of the Act, 33 U.S.C. § 1321(b)(3), and over the Parties. Venue lies in this district pursuant to 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a), because the claims arose in American Samoa and the settling defendants are located or do business in this district. For purposes of this Stipulation and Order, or any action to enforce it, settling defendant Edward DaCosta consents to the Court's jurisdiction over this Stipulation and Order and any such action and over the settling defendants. Settling defendant Edward DaCosta consents to venue in this judicial district.

2. For purposes of this Stipulation and Order, settling defendant Edward DaCosta agrees that the Complaint states claims upon which relief may be granted pursuant to Section 311(b) and (e) of the CWA, 33 U.S.C. §1321(b) and (e).

3. Within 30 Days after the Court signs and enters this Stipulation and Order, settling defendant Edward DaCosta shall pay five thousand dollars (\$5,000.00) as civil penalties for the Clean Water Act violations alleged in the Complaint, together with interest accruing from the date on which this Stipulation and Order is filed with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of filing.

4. Settling defendant Edward DaCosta shall pay the civil penalties due by certified check to the U.S. Department of Justice in accordance with written instructions to be provided to the defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Hawaii. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11245/1 and shall specify that the payment is made toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).

5. At the time of payment, settling defendant Edward DaCosta shall send a copy of the check, together with a transmittal letter, which shall state that the payment is for the civil penalties owed pursuant to the Stipulation of Partial Settlement and Order of Partial Dismissal in this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-11245/1, to the United States to:

Thomas H. Van Horn
National Pollution Funds Center
US Coast Guard Mailstop 7605
2701 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7605

Chief
Office of Claims and Litigation CG-LCL
United States Coast Guard
2703 Martin Luther King Jr. Avenue, SE

Washington, DC 20593-7213

6. Settling defendant Edward DaCosta shall not deduct any monies paid under this Stipulation and Order in calculating his federal income tax.

7. If settling defendant Edward DaCosta fails to pay the civil penalties when due, he shall pay a stipulated penalty of five hundred dollars (\$500) per day for each day that payment is late.

8. Entry of this Stipulation and Order and payment by settling defendant Edward DaCosta shall constitute full settlement of the civil claims of the United States for the violations alleged in the Complaint against him up to the date of filing of this Stipulation and Order.

9. If the payment specified in Paragraph 3 is not made within forty days of the date of entry by the Court of this Stipulation and Order, the United States reserves the right to move this Court to vacate this Stipulation and Order and reinstate this action.

10. Notwithstanding any other provision herein, this Stipulation and Order is voidable upon motion by the United States' if the financial information provided by the settling defendant, or the financial certification contained in the next paragraph made by the settling defendant in signing this Stipulation and Order, is subsequently determined by the United States to be, in any material respect, false or inaccurate. If this Stipulation and Order is voided by the Court, the

settling defendant shall forfeit all payments made pursuant to this Order, and the resolution of liability provided by Paragraph 8 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from materially false or inaccurate information.

11. Settling defendant Edward DaCosta hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has submitted to the United States financial information that fairly, accurately and materially sets forth their financial circumstances, and that those circumstances have not materially improved between the time the financial information was submitted to the United States and the time he executed this document.

12. This Court shall retain jurisdiction for the purposes of interpreting and enforcing this Stipulation and Order.

13. Each undersigned representative of the settling defendant and the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Stipulation and Order and to execute and legally bind the Party he or she represents to this document. This document may be signed in counterparts, and its validity shall not be challenged on that basis.

14. Upon approval and entry of this Stipulation and Order by the Court, this Order shall constitute a final judgment of the Court as to the United States and settling defendant Edward DaCosta.

15. Settling defendant Edward DaCosta does not oppose this Stipulation and Order and consents to entry of the Order without further notice.

Dated and entered this _____ day of _____, 2021.

UNITED STATES DISTRICT JUDGE

Signature Page to Stipulation of Partial Settlement and Order of Partial Dismissal in *United States v. JM Fisheries LLC et al.*

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

November 17, 2021
Date

s/ Jason T. Barbeau
JASON T. BARBEAU
Senior Trial Attorney (D.C. Bar No. 468200)
STEFAN J. BACHMAN
Trial Attorney (S.C. Bar No. 102182)
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Signature Page to Stipulation of Partial Settlement and Order of Partial Dismissal in *United States v. JM Fisheries LLC et al.*

FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):

5 OCT 2021
Date


BRIAN JUDGE
Chief, Office of Claims and Litigation
United States Coast Guard
Coast Guard Headquarters
2703 Martin Luther King Jr. Ave, SE
Washington, DC 20593-7213

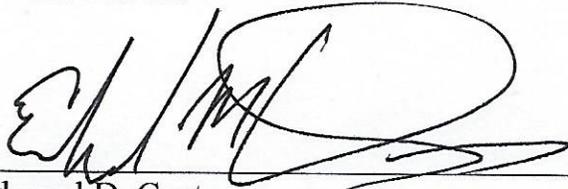
15 OCT 2021
Date


CDR TAMARA WALLEN
Staff Judge Advocate
United States Coast Guard
Fourteenth Coast Guard District
300 Ala Moana Boulevard, Room 9-130
Honolulu, HI 96850

Signature Page to Stipulation of Partial Settlement and Order of Partial Dismissal in *United States v. JM Fisheries LLC et al.*

FOR DEFENDANT EDWARD DACOSTA:

10/12/21
Date



Edward DaCosta